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March 1, 1996 **FEDERAL COMMUNICATIONS COMMISSION
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Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: WT Docket No. 96-6

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Bell Atlantic NYNEX Mobile, Inc., are an original and four copies of its "Comments" on the Notice of Proposed Rulemaking in WT Docket No. 96-6, Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

cc: ITS, Inc.

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Before The
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In the Matter of)
)
Amendment of the Commission's Rules)
to Permit Flexible Service Offerings in)
the Commercial Mobile Radio Services)

WT Docket No. 96-6

COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

Bell Atlantic NYNEX Mobile, Inc. (BANM),¹ by its attorneys, hereby submits its comments on the Commission's Notice of Proposed Rulemaking (Notice) in this proceeding (FCC 96-17, released January 25, 1996).

I. SUMMARY

The Notice addresses the provision of "fixed wireless local loop service" by commercial mobile radio service (CMRS) carriers. It proposes to amend the Commission's rules to clarify that (1) broadband CMRS providers may offer fixed wireless local loop service, and (2) CMRS regulation applies to that service if a carrier also offers interconnected, for-profit mobile service to subscribers. The Notice seeks comment on these proposals, and on whether they should be extended to all types of fixed services. (Notice at ¶ 27.)

¹Bell Atlantic NYNEX Mobile, Inc. is the managing general partner of Cellco Partnership, which holds or controls cellular radiotelephone licenses to provide service to more than 80 cellular markets throughout the United States.

These rule changes are not needed. As the Notice recognizes (at ¶ 19), the Commission's rules already authorize broadband CMRS licensees to offer fixed services, including wireless local loop service, as an ancillary, auxiliary or incidental service, and already regulate these fixed services as CMRS. The current rules are appropriate and workable. Moreover, fixed services are a fledgling business for CMRS carriers, and few if any are offering what the Notice describes as wireless local loop service. There is no legal or economic rationale to examine possible changes to the status quo at this time.

The Commission has said it is straining its tight resources to conduct the rulemakings that are required by the 1996 Telecommunications Act. This docket is not one of those rulemakings. The Commission should conclude it promptly with a brief order that confirms existing policy permitting CMRS carriers to offer fixed services under the CMRS regulatory structure.

II. EXISTING RULES PERMIT CMRS PROVIDERS TO OFFER ANCILLARY AND AUXILIARY FIXED SERVICES.

The first section of the Notice reviews the types of services that broadband CMRS carriers have been authorized to provide, and notes that each may offer fixed services as part of its offerings to customers. While the rules for PCS, SMR and cellular use different terms to describe the basis on which fixed services can be offered (e.g., "ancillary," "auxiliary," "incidental," "secondary"), all permit such services as CMRS as long as two requirements are met: (1) the carrier continues to offer interconnected, for-profit mobile service to the public on licensed CMRS

spectrum, and (2) the fixed service does not cause interference to the mobile service.

Despite the flexibility the Commission's existing rules provide to CMRS carriers, the Commission states that it is "finding that carriers are hesitant to take advantage of that flexibility without further guidance from the Commission." (Notice at ¶ 5.) The Commission does not identify the basis for this finding, and BANM is not aware of any CMRS providers which seek to provide fixed services that would not be ancillary or auxiliary. The Commission, however, proposes to amend its rules to state explicitly that wireless local loop service may be offered.

New rules are not needed. The Commission acknowledges that its current rules authorize CMRS providers to offer ancillary and auxiliary fixed services. (Notice at ¶¶ 3-4.) These rules reflect the Commission's conclusion that significant benefits flow to competition and to the public from new technologies.² Section 24.3 thus authorizes PCS carriers to offer fixed services on an "ancillary" basis under their licenses. Cellular carriers may also provide fixed services, either as an "incidental service" under Section 22.323 or as an "auxiliary common carrier

²E.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd. 7700, 7711-12 (1992) (adopting broad definition of PCS "to allow PCS providers the maximum degree of flexibility" in designing integrated service offerings to meet changing technology and customer needs). In that decision, the Commission specifically described "wireless local loops" as a PCS service. 8 FCC Rcd. at 7747.

service" under Section 22.901(d).³

To the extent that existing rules create uncertainty because they employ different terms in authorizing fixed service by different types of CMRS providers (e.g., "ancillary," "auxiliary" and "incidental"), the Commission can eliminate that uncertainty simply by stating that any CMRS provider may offer fixed services as long as the two longstanding requirements are met: Mobile service continues to be offered and the fixed service does not interfere with mobile service. This will ensure that all CMRS carriers have the same authority to offer fixed services as part of their service offerings, consistent with the Congressional and Commission policies of achieving "regulatory symmetry" among competing CMRS providers.⁴

The Notice (at ¶ 14) also seeks comment on whether to adopt additional rules limiting the extent to which CMRS providers may offer fixed wireless local loop service or imposing additional technical and operational restrictions. The Commission has previously rejected such limits in authorizing mobile carriers to

³Former Section 22.930 stated that the only auxiliary fixed service which cellular carriers could offer was Basic Exchange Telephone Radio Service. In rewriting Part 22, however, the Commission deleted this rule and its restriction, and explicitly decided that cellular carriers can and should be permitted to offer fixed services, including personal communications services. "The relevant law gives us full authority to determine which entities should be licensed for fixed services." Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, 9 FCC Rcd. 6513, 6571 (1994).

⁴Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd. 7988, 8002 (1994) (finding that all CMRS providers compete in the same market; "Our first goal is to create a symmetrical regulatory framework for commercial mobile radio services in order to foster economic growth and expanded service to consumers through competition.").

offer fixed services.⁵ No such limits are either necessary or desirable. Market forces should determine the mix of services that CMRS providers offer, as long as they continue to serve the public over their licensed frequencies. CMRS providers would remain subject to the requirements that they continue to offer mobile services and that the fixed service does not interfere with those mobile services. Given the infant state of fixed wireless local loop service, it is premature to adopt new technical and operational rules.

III. AUTHORIZED SERVICES OFFERED BY CMRS PROVIDERS ARE CMRS.

The second part of the Notice (at ¶¶ 19-20) asks how fixed wireless local loop service offered by CMRS providers is to be regulated. Current Commission policy already answers that question. The Commission regulates ancillary and auxiliary fixed services that are offered by CMRS providers over their licensed frequencies as CMRS. As the Notice recognizes, "We established in the CMRS Second Report and Order that all auxiliary services provided by mobile service licensees would be considered in the definition of mobile services." (Notice at ¶ 19.) This policy properly recognizes the benefits the Commission has identified in

⁵When it first authorized Part 22 carriers to offer "incidental" fixed services, the Commission was asked to impose a 10 percent limit on the amount of fixed services a carrier could offer. It rejected defining "incidental" in a way that would restrict services: "We believe the provision of incidental services should be a business decision of a licensee in a competitive marketplace. We will not impose artificial constraints with an arbitrary percentage." Revision and Update of Part 22 of the Public Mobile Radio Services Rules, 54 RR 2d 1661, 1696 (1983).

allowing CMRS providers to offer a mix of new services on an integrated basis.⁶

For this reason, no new rules are needed.

There is also no basis to consider changing the CMRS regulatory status of fixed services which can be offered by wireless carriers. In enacting Section 332(c) of the Communications Act in 1993, Congress created a separate scheme of lessened regulation for CMRS providers because it recognized the importance of promoting the growth of CMRS through competition rather than regulation. In implementing that law, the Commission has forborne from much regulation of CMRS providers and has preempted state rate regulation, finding that regulation can impede the development of new wireless services, and that market forces should instead guide that development.⁷ Since the Commission has already determined that auxiliary and ancillary fixed services are CMRS, and since Congress and the Commission have already implemented a comprehensive scheme for regulation of CMRS, changing the regulatory status of fixed CMRS services would undermine both Congressional and Commission policy.

Congress allowed Section 332(c)'s CMRS regulatory scheme to be replaced

⁶Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd. 1411, 1424-25 (1994); PCS Second Report and Order, *supra* n. 2, at 7711.

⁷CMRS Second Report and Order, *supra* n. 6, at 1414; Petition of Arizona Corporation Commission to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services, PR Docket No. 94-104, 10 FCC Rcd. 7824, 7827 (1994) ("Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation for which the Commission and the states could demonstrate a clear-cut need.").

by a different scheme, but only where "market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates," or where such services are "a replacement for land line telephone exchange service for a substantial portion" of such service in a state. 47 U.S.C. § 332(c)(3)(A). The Commission has just decided that neither of these conditions exist, either on a national basis or in the eight states that sought to continue traditional rate and other regulation.⁸ If these conditions develop, the Commission can consider whether to impose more intrusive non-CMRS regulation. But, as the Commission has held, those conditions do not exist today. Moreover, fixed services offered over CMRS frequencies are in their infancy. They comprise only a tiny percentage of services offered by wireless carriers, and wireless carriers supply only a small fraction of all local telecommunications service. When this situation changes, the Commission can then consider whether to impose more intrusive non-CMRS regulation.

For now, however, the Telecommunications Act of 1996 requires the Commission to initiate and conclude literally dozens of rulemakings in a matter of months. The Commission has repeatedly expressed concern as to whether it has the resources to conduct even these rulemakings.⁹ This docket, however, is not

⁸See authority cited in n. 7, supra.

⁹"At current funding levels, we would find it problematic to implement the bill in the manner Congress intends while at the same time responsibly discharging our existing responsibilities." Letter to the Senator Larry J. Pressler from Reed Hundt, Chairman, Federal Communications Commission, et al., January 19, 1996.

one of the proceedings mandated by the new Act. The Commission should not expend its already strained resources by taking up the complicated task of crafting a new regulatory regime for certain wireless services.

IV. CONCLUSION

For the above reasons, the Commission should promptly terminate this proceeding and reaffirm its existing policies that permit cellular, PCS and SMR providers to offer wireless fixed services as commercial mobile radio services.

Respectfully submitted,

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Dated: March 1, 1996

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